

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1552 OF 2003

SUBHEDAR B. PANDEY .. PETITIONER

Versus

THE STATE OF MAHARASHTRA & ORS.. RESPONDENTS

MR. O. P. Pandey for petitioner

Mr. Chinchalikar, AGP

Mr. V. S. Thakur i/b Sanjay Udeshi for R-2 to 6

CORAM:-SMT. RANJANA DESAI, J.

DATED:-15-3-2005

P.C.

In this petition the petitioner has challenged order dated 3/1/2002 passed by the Competent Authority, Konkan Division, in Case No. 12/98. A few facts will have to be noted.

2. The petitioner is the owner of suit premises. It is the case of the petitioner that under a leave and licence agreement dated 1/12/1996 he gave the suit premises to one Vithalrao Dhanappa, for a period of 11 months. The

period was to expire on 20/11/1997. The said Dhanappa expired on 30/10/1997. His heirs have been brought on record and they are prosecuting the litigation.

3. According to the petitioner, after the expiry of the licence period he called upon the respondents to vacate the suit premises. However, the respondents did not vacate the suit premises and, therefore, he filed an application before the Competent Authority being Case No. 12/98. That application was filed under Section 13A (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 ("Rent Act" for short). It appears that on 28/7/2000 the application was allowed ex parte. The learned counsel for the petitioner states that the said decree was executed on 16/9/2000 and petitioner got the possession of the suit premises.
4. Thereafter the respondents preferred an application for condonation of delay and for setting aside the ex parte order dated 28/7/2000. That application was allowed on 15/12/2000. The delay was condoned and the ex parte order was set aside.
5. It is the case of the petitioner that the respondents executed that decree and dispossessed the petitioner on 20/7/2000. The petitioner then filed an application for setting aside ex parte order dated 15/12/2000. By the impugned order that application has been rejected. The competent authority has observed that to solve the controversy between the parties it

will be appropriate to give opportunity to the respondents to take part in the present case and lead evidence. The competent authority has further observed that the respondents have specifically mentioned that the area in which the suit premises are situated is declared as slum area and, therefore, the Competent Authority cannot try the instant case. The competent authority has observed that it is necessary to decide this law point also and, therefore, he has refused to set aside order dated 15//12/2000. That order is impugned in this petition.

6. I have heard the learned counsel for the parties.

7. In my opinion, it is not necessary to disturb the impugned order. The 1st application filed by the petitioner was decided ex parte on 28/7/2000. Thereafter respondents filed an application for setting aside that ex parte order. When that application was heard the petitioner remained absent and, therefore, that application was decided ex parte. The competent authority has rightly observed that to decide the controversy as to whether the area where the suit premises are situated is declared as a slum area and for fair trial it is necessary to hear both the parties and give them an opportunity to lead evidence. This view of the competent authority is proper and the competent authority cannot be faulted for having taken such a view.

8. In view of this, in my opinion, the following order will meet the ends of

justice.

The competent authority shall after giving an opportunity to both sides to lead evidence, decide the case in accordance with law. Needless to say that the parties will abide by the final decision of the competent authority.

It is clarified that this court has not expressed any opinion, on the merits of the case. Petition is disposed of.

Since the case is already delayed the competent authority is directed to hear and dispose of the application within a period of six months from the date of receipt of this order by it. The parties are expected to co-operate. All contentions of both sides are kept open.